

**STATE OF NORTH DAKOTA**  
**COMMISSIONER OF AGRICULTURE**

IN THE MATTER OF:

Curt Stahl

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**RECOMMENDED  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER**

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On January 8, 2001, a Complaint was filed with the Commissioner of Agriculture by Jeff Weispfenning, Deputy Commissioner, Department of Agriculture, requesting administrative action in the form of imposition of a civil penalty based on allegations of violation of the pesticide laws by Curt Stahl. The complaint cites as grounds for administrative action violations of N.D.C.C. § 4-35-15(2) and (5).

On January 29, 2001, the Commissioner requested the designation of an administrative law judge (ALJ) from the Office of Administrative Hearings to conduct a hearing and to issue recommended findings of fact and conclusions of law, as well as a recommended order, in regard to the Complaint. On January 30, 2001, the undersigned ALJ was designated.

On February 2, 2001, the designated ALJ issued a Notice of Hearing scheduling a March 7, 2001, hearing. On March 12, 2001, at the request of the Department, the ALJ issued a Notice of Rescheduled Hearing. The hearing was held as rescheduled on March 28, 2001, in the Office of Administrative Hearings, Bismarck, North Dakota. The Department was represented at the hearing by Assistant Attorney General Matthew A. Sagsveen. The Respondent, Curt Stahl, was present at the hearing. Mr. Stahl represented himself at the hearing.

Shortly after the ALJ began his introduction and explanation of the hearing process, Mr. Stahl said that he wished to make a statement. He then admitted the violation. He admitted that it was too windy when he sprayed on September 19, 2000. He said he thought that perhaps the wind was of less velocity where he was spraying then would be measured at the airport, perhaps half as strong, however, he acknowledged that he was wrong and apologized for his mistake and for taking everyone's time to attend the hearing. He said that he did quit spraying on September 19 immediately after he finished the job at 470 Laredo Drive. He said that this has been his first violation of the pesticide laws, that he has a good reputation in the pesticide spraying business, and that he intends to abide by all of the pesticide laws in the future. He said that he makes about 500 pesticide applications a year and has been a commercial pesticide applicator for five years. He said that he has now purchased two wind measuring devices that he intends to use. Again, Mr. Stahl was very apologetic and admitted that he "goofed."

Stahl also pleaded for leniency. He said that he cannot afford a \$400 fine and he proposed that he be placed on probation for a probationary period with the fine doubled if he committed any further violations of the pesticide laws during that probationary period.

Mr. Sagsveen accepted Stahl's admission and said that although the law forbids him to talk with the Commissioner about final decision making, he is certain that the Commissioner will take the admission and Mr. Stahl's apology, plea for leniency, and other statements into consideration when making his final decision in this matter.

Based on the admission of the allegations of the Complaint by Stahl, the administrative law judge makes the following recommended findings of fact and conclusions of law.

### **FINDINGS OF FACT**

1. Curt Stahl is a commercial pesticide applicator in the core and ornamental turf categories in the State of North Dakota and his certification number is 136911.
2. On September 19, 2000, at approximately 10:15 A.M., Stahl was spraying pesticides on a lawn at 470 Laredo Drive in Bismarck, North Dakota. At the time Stahl was making the pesticide application the wind velocity in the vicinity of Bismarck-Mandan was 20 to 34 miles per hour as evidenced by the weather records available for September 19. Although he made an admission of violation, Stahl said that at the location where he made the pesticide application, the winds may have been about half the velocity of the wind velocity recorded at the airport.
3. After making the pesticide application at the 470 Laredo Drive location, Stahl ceased making any further pesticide applications on September 19, 2000.

### **CONCLUSIONS OF LAW**

1. On September 19, 2000, Stahl violated the provisions of N.D.C.C. § 4-35-15(2) and (5), in that by making a pesticide application at that time, considering the wind conditions, he made a pesticide application inconsistent with the pesticide label, and he operated in a faulty, careless, or negligent manner.
2. The Commissioner has authority to bring this action under N.D.C.C. chs. 4-35 and 28-32, and the Commissioner has authority to impose a civil penalty, not to exceed \$5,000, for each violation of the provisions of N.D.C.C. ch. 4-35, *i.e.*, for each violation proven or admitted at a hearing.

### **RECOMMENDED ORDER**

The Respondent, Curt Stahl, has admitted a violation of the provisions N.D.C.C. ch. 4-35. The Complaint asks for imposition of a \$400 civil penalty as a result of proof of the violation alleged. A \$400 civil penalty is imposed against Curt Stahl for the violation admitted. However, payment of a portion of that civil penalty is suspended and not invoked at this time. If Stahl is found in violation of any of the pesticide laws of the state of North Dakota within a period of one year from the date of the final order in this matter, Stahl must pay the remainder of the \$400 civil penalty suspended and not invoked by the final order, in addition to any civil penalty imposed as a result of such additional violation. If Stahl is not found in violation of any of the pesticide laws of the state of North Dakota within a period of the one year from the date of the final order in this matter, payment of the uninvoked portion of the \$400 civil penalty suspended by the final order shall remain uninvoked.

Dated at Bismarck, North Dakota, this 29th day of March, 2001.

State of North Dakota  
Roger Johnson  
Commissioner of Agriculture

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